

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL WRIT PETITION NO. 168 OF 2005

Vivek Kumar Mishra

Petitioner

Vs.

1. The Union of India and ors.

Respondents

Mr.Ajai P. Singh for Petitioner.

Mr.D.N. Salvi for Respondent Nos.1 to 4.

Mr.A.M. Shringarpure, APP for Respondent No.5-State.

**CORAM: S.S. PARKAR & ANOOP V. MOHTA, JJ.**

**Date : January 25, 2005.**

**P.C.:**

1. Heard both sides and perused the writ petition. The petitioner was convicted under Court Martial proceeding by the Naval Authorities. He was on bail by the order of this Court dated 17th August, 2004 passed in Criminal Writ Petition No.1587 of 2004 on certain conditions. One of the conditions imposed on the petitioner was to report to the officer on duty OOD INS Angre on every Monday, Wednesday and Friday at 10 a.m. He was also directed to surrender his passport to the Commanding Officer INS Angre. He was released on bail pending the proceeding that might be filed by him challenging the order of conviction recorded against him.

2. The present petition is filed for the purpose of relaxation of the condition of reporting to the Naval Authorities on three days in a week for some period as he has to go to see his ailing mother in his native place Faizabad in the State of U.P. Secondly it is stated that the petitioner's sister-in-law is going to get married on 27/1/2005 and at the same time he has to arrange the marriage of his own sister. It is stated that the petitioner is eldest son in the family and his father is no more. The copy of the invitation card in respect of wedding of his sister-in-law, which is fixed on 27/1/2005, has been annexed at Exh. "B" to this petition. The medical certificate of his mother is also annexed at Exh."D" to this petition. Similarly, the telegram informing him about the illness of his mother is annexed at Exh."E" to this petition.

3. It is stated on behalf of the petitioner that application was made to the Lieutenant Commander for relaxing the condition of reporting to the authority as he has to go to his native place. That application was rejected by the Naval Authority by the letter/order dated 11/1/1005 on the ground that the condition of reporting was imposed on the petitioner by the order of the High Court and therefore, Naval

Authorities had no jurisdiction to relax the said condition.

4. Mr. Salvi appearing for respondent nos.1 to 4 - authorities states that the review application filed by the petitioner has been disposed of by the reasoned order dated 13/1/2005 whereby the order of conviction has been confirmed but the sentence has been reduced from 18 months to 9 months. Mr. Salvi states that the petitioner was in custody for a period of about 9 months during trial and he was in jail for a period of 69 days. Mr. Salvi submits that if the order passed in review petition on 13/1/2005 is not challenged by the petitioner he will have to surrender to jail. He further submits that the bail was granted by this court during the pendency of the review petition and, therefore, the order of releasing him on bail has come to an end after the disposal of the aforesaid appeal on 13/1/2005. Mr. Singh on the other hand submits that the petitioner was not served with the copy of the order and he learns about the disposal of the review petition today only in this court and he would like to adopt proceeding challenging the said order.

5. In view of the above, we allow this petition and relax the condition of reporting to the officer on

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duty OOD INS Angre on Monday, Wednesday and Friday at 10 a.m. for a period of two weeks from today and the petitioner is allowed to leave Mumbai for his Home Town for a period of two weeks on condition that the petitioner will furnish the address and the name of the place where he will be staying during the period of two weeks.

(S.S. Parkar, J.)

(Anoop V. Mohta, J.)